

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 1.17 of the	)	GC Docket No. 02-37
Commission's Rules Concerning Truthful	)	
Statements to the Commission	)	
	)	
	)	

**REPLY COMMENTS OF VERIZON**

No commenters supported the application of the Commission's proposed rule, as written, to all persons who appear before the Commission. And no one seriously disputes that the proposed rule would almost certainly harm the flow of information to the Commission and otherwise chill communication between the public and the FCC. Some commenters, while arguing that they (or their members) should not be subject to the rule, suggested that the rule might be appropriate for companies regulated by the Commission. *See, e.g.*, MMTC Comments, at 1-7; Texas OPC Reply Comments, at 2. However, the fact is the proposed rule change is perhaps the most unnecessary for regulated companies, who already have adequate incentives to be careful in presenting information to the Commission. Regardless, the proposed rule is so grossly overbroad as to violate the First Amendment and raise other constitutional concerns, is not necessary, and would inhibit the free flow of information.

**I. The Proposed Rule Change is Impermissibly Overbroad**

More than one commenter has pointed out that, as drafted, the proposed rule change is grossly overbroad. *See, e.g.*, FCBA Comments, at 6-7; James A. Kay Comments, at 2-4. Only one commenter has argued that the rule would "not necessarily"

be overbroad if applied to regulated companies (while arguing that it *would* be overbroad if applied to those not regulated by the Commission). Texas OPC Reply Comments, at 2. That commenter suggested that because the terms “material” and “negligent” are familiar, they are not “vague” or “overbroad.” *Id.* at 2-3. However, this argument ignores the context in which those words appear. The proposed rule would state that no person shall “negligently provide incorrect material information or intentionally or negligently omit *any* material information *bearing on any matter within the jurisdiction of the Commission.*” NPRM, ¶ 4 (emphasis added). Requiring that someone not negligently omit “any” material information “bearing on any matter within the jurisdiction of the Commission” is so expansive as to be meaningless, and thus is void under the Constitution, for both vagueness and overbreadth.

The Texas OPC also argues that applying the rule to written (but not oral) statements would be a fair compromise, as “[a]nything produced by the regulated entity in writing should be factually complete,” and “[i]n preparing a written as opposed to oral response, the regulated entity has the time to ensure the accuracy of its information.” Texas OPC Reply Comments, at 3. However, the rule proposed goes far beyond making sure that the person making the statement makes a complete and accurate response. Rather, by requiring that the person not to omit *any* material information “bearing on *any* matter within the jurisdiction of the Commission,” the rule appears to require not only that the person check the accuracy of its own statements, but that it also determine whether there is *any other* information bearing on *any* matter within the Commission’s jurisdiction that the Commission may deem to be “material.”

Texas OPC's reply comments also misunderstand Verizon's arguments about how the proposed rule impinges on the First Amendment and the lawyer-client relationship. Verizon is not advocating that persons be allowed to present to the Commission "misrepresentations" or "half-truths." Texas OPC Reply Comments, at 4, 5. However, it is a central tenant of the First Amendment, and of the lawyer's advocacy role, that a party be allowed to make comments (which are true, accurate, and complete), without being forced to also present "any" information that may be material to "any [other] matter." Under the proposed rule, if broadly interpreted, parties arguably would be forced not only to make sure that their own comments to the Commission were complete, but would also be forced to track down (lest they be negligent) and present facts that might be deemed "material" to other issues, or to other points of view. This the Commission cannot require.

## **II. The Commission Should Not Adopt a Negligence Standard for Regulated Companies**

Several commenters also argued that the rule should not be changed to impose penalties under a negligence standard. *See, e.g.*, FCBA Comments, at 8-11; James A. Kay Comments, at 4. Some commenters have suggested that a "negligence" standard would not be appropriate for those not regulated by the Commission, but would be appropriate for regulated companies. *See, e.g.*, MMTC Comments at 1, 7; Texas OPC Reply Comments, at 2. However, there may be *less* of a need for a negligence rule against regulated companies than others. Regulated companies are repeat players before the Commission, and thus have concerns about maintaining credibility. In addition, because they are regulated by the Commission, the Commission has more power over them than it does over those it does not regulate, so regulated companies potentially have

the most to lose if the Commission finds their statements to be inaccurate. There also are external safeguards, as other interested parties often can, and do, check up on the data regulated companies present to the Commission. The fact is that, as the Commission recognizes, “the vast majority of persons dealing with the Commission understand their obligation to take the appropriate steps to ensure that the information they submit is accurate.” NPRM, ¶ 3. Indeed, when mistakes have been made, they often are revealed to the Commission because the person making the mistake has later uncovered it, and pointed it out. Because persons dealing with the Commission – regulated companies especially – already have ample incentives to be careful, adding another potential “incentive” (the possibility of fines) will not have any material impact on reducing mistakes. The only thing a negligence standard would accomplish would be to shift the focus of proceedings from seeking truth to seeking to avoid (or, by adversaries, seeking to impose) punitive fines.

Rather than rewriting the section on truthful statements entirely, the Commission could amend the language of the rule to make it explicit that intentional or repeated material misstatements or omissions will subject one to enforcement action. That would be sufficient to resolve the Commission’s concerns with those who do not “understand their obligation to take the appropriate steps to ensure that the information they submit is accurate,” but would not unduly inhibit the free flow of information to the Commission.

### **Conclusion**

The Commission should not adopt the language of proposed new Rule 1.17(b).

Respectfully submitted,

A handwritten signature in cursive script, reading "Ann Rakestraw".

---

Ann H. Rakestraw

Michael E. Glover  
Edward Shakin  
Of Counsel

1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201  
(703) 351-3174

Attorney for the  
Verizon telephone companies

May 7, 2002